INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	4
Argument	7
Conclusion	13

CITATIONS

Cases:

McGuire v. *Blount*, 199 U. S. 142 9
United States v. *McIntosh*, 2 F. Supp. 244 ..... 7, 8, 9, 11

Statutes:

Act of July 1, 1918, 40 Stat. 704 ..... 3, 7, 8, 9
Virginia Code, section 5805 11

Miscellaneous:

Federal Rules of Civil Procedure:
Rule 36 6
Presidential Proclamation of November 4, 1918 (40 Stat. (Pt. 2) 1874) 8

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 739

EARL T. ELLIS, RECEIVER OF THE QUANTICO COMPANY, INCORPORATED, PETITIONER

v.

CLIFTON B. CATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 25-31) is reported at 88 F. Supp. 19. The opinion of the court of appeals (R. 33-38) is reported at 178 F. 2d 791.

JURISDICTION

The judgment of the court of appeals was filed on December 20, 1949 (R. 39). A petition for rehearing was filed on January 17, 1950, and denied

on January 28, 1950 (R. 39-40). The petition for certiorari was filed on April 8, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254(1).

QUESTIONS PRESENTED

1. Whether the receiver of the former corporate owner of real property may, in a suit against the Government officer occupying the property, recover its possession when title thereto has vested in the United States by Presidential Proclamation issued in 1918 under specific authorization of Congress and, following the procedure established by Congress, just compensation was paid to the corporate owner.

2. Whether a decree entered in a suit brought by the United States against predecessor receivers of such company adjudging that title to the lands in question is in the United States and enjoining such predecessors from instituting any proceedings designed or intended to disturb the possession of such lands by the United States or its officers is *res judicata* of this suit.

3. Whether this action, filed almost thirty years after the Presidential Proclamation, is barred by the fifteen years' limitation established by Virginia law on suits to recover possession of land.

4. Whether the suit abates when it appears that the sole defendant is no longer in possession of the land.

STATUTE INVOLVED

The pertinent provisions of the Act of July 1, 1918, 40 Stat. 704, provide as follows:

> The President is authorized to acquire under the authority and provisions of this Act all of the land specified in the report of the board appointed by the Major General Commandant, Marine Corps, dated January twenty-fifth, nineteen hundred and eighteen, at Quantico, Virginia, as a permanent Marine Corps post, and the sum of $475,000, or so much thereof as may be necessary, is hereby appropriated for this purpose. [40 Stat. 724.]
>
> * * * * *
>
> The President is hereby authorized and empowered, within the amounts herein appropriated therefor, to take over immediately for the United States possession of and title to each and all of the parcels of land, including appurtenances and improvements for the acquisition of which authority is herein granted and for which appropriations are herein made: *Provided,* That if said lands and appurtenances and improvements shall be taken over as aforesaid, the United States shall make just compensation therefor, to be determined by the President, and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as added to said

seventy-five per centum will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, section one hundred and forty-five, of the Judicial Code: *Provided further,* That upon the taking over of said property by the President as aforesaid the title to all property so taken over shall immediately vest in the United States. [40 Stat. 738.]

STATEMENT

On December 18, 1947, this action was instituted by petitioner, as Receiver of The Quantico Company, Incorporated, to recover possession of certain lands forming part of the United States Marine Corps Base at Quantico, Virginia. The complaint alleged in substance as follows (R. 1-3): That The Quantico Company on July 1, 1918, was owner in fee of the lands in question and that appellant, the Company's Receiver, was similarly possessed on October 6, 1947 (complaint, par. 3); that on May 6 and July 1, 1918, Quantico Company and the United States entered into a contract by which the lands were sold to the United States for $375,000.00, but that the United States did not make payment of the purchase price and never received a deed to the lands from Quantico Company (complaint, par. 4); that certain of the lands were occupied by the United States from July 1, 1918, until June 30, 1946, under a lease from Quantico dated July 1, 1918, and that said lease was terminated as of June 30, 1946, by notice from

Quantico Company to the President of the United States (complaint, par 5); that the defendant on October 7, 1947, wrongfully entered into possession of the lands and continues to withhold possession (complaint, par. 6). The prayer is for possession and costs.

On February 6, 1948, respondent filed his answer (R. 3-5). That answer may be summarized thus: Ownership of and possession of the lands by Quantico Company on July 1, 1918, was admitted; it was alleged that the lands are owned in fee by the United States;[1] it was admitted that Quantico Company sold and the United States purchased the lands; it was also admitted that the United States occupied the lands for a short time under a lease dated July 1, 1918, and all other allegations of the complaint touching the lands in question were denied. The answer further interposed as defenses the statute of limitations, that respondent is no longer in possession of the lands and has no interest therein, and the defense of *res judicata,* and asked for dismissal of the complaint.

On September 3, 1948, petitioner filed a request for admission of certain facts (R. 5-6). No response was filed to this request for admissions, and

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[1] Petitioner's statement (Pet. 6, repeated at Pet. 26) that the answer alleged that the Government's title was acquired by virtue of the decree entered in 1933 in a suit between the United States and petitioner's predecessor is inaccurate. That judicial proceeding and the decree therein entered was not relied upon as the source of title, but as *res judicata* on the title issue. (Ans. Fifth Defense, R. 4-5.)

under Rule 36, Federal Rules of Civil Procedure, they stand admitted.[2]

On October 12, 1948, petitioner filed a motion for summary judgment, accompanied by supporting affidavits (R. 7-8). Likewise, on May 18, 1949, respondent filed a motion for summary judgment of dismissal with supporting affidavit (R. 21-22). Hearing was had on both motions on June 6, 1949.[3] On July 16, 1949, the district court filed its opinion (R. 25-31), and on July 20, 1949, entered its judgment granting respondent's motion (R. 31-32). As appears from the district court's opinion, this dismissal was based upon the propositions that title to the lands is in the United States, the issue of title and possession is *res judicata,* the action is barred by limitations, and on the fact that respondent is no longer in possession.

The court of appeals affirmed. In its per curiam opinion the court sustained the judgment on all four grounds upon which the trial court based its dismissal of the action.[4]

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[2] The immateriality of most of these facts is later shown (pp. 10-11, *infra*).

[3] Petitioner's repeated reference (Pet. 2, 9, 18) to the *absence* of any motion by the defendant (respondent) is beyond comprehension. The same position was taken and expressly rejected by the court of appeals (R. 36-37), and as above noted the motion appears at R. 21-22.

[4] While the court of appeals dealt primarily with the questions of title and *res judicata,* and did not specifically discuss the grounds of limitations and abatement, it did adopt the trial court's "comprehensive opinion, to which nothing need be added, as we are in complete accord with the reasoning and conclusions therein expressed" (R. 37).

ARGUMENT

As appears from the decisions of both courts below (R. 25-31, 33-38), the decision below was based on the facts of record in this case and on facts and records in two previous cases in the district court, of which facts and records that court took judicial notice. These latter cases are *United States* v. *H. B. Gilliam and C. E. Ellis, Receivers of the Quantico Company, Incorporated,* Equity No. 33 in the district court, and *United States* v. *McIntosh,* 2 F. Supp. 244 (1932).[5] The reported decision in the latter case includes the *Gilliam and Ellis* case (2 F. Supp. at p. 250) and two other cases. The four cases there decided arose in this way. Four former owners of lands now constituting the United States Marine Base at Quantico, Virginia, including the Quantico Company by its receivers, instituted suits in ejectment against Government officers in possession. The United States thereupon sued each of the former owners in the same district court which decided the instant suit to enjoin prosecution of the ejectment suits and to quiet its title, and decrees were entered granting such relief. The facts there established demonstrate the utter lack of merit in petitioner's case.

1. As held by both courts below, the United States has title to the property. The Act of July 1, 1918, 40 Stat. 704, 724, 738 (*supra,* pp. 3-4) au-

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[5] Petitioner as Receiver is the successor of Gilliam and Ellis (Petitioner's Ex. A, R. 10-11).

thorized the President to acquire certain lands, including those here involved, as a permanent Marine Corps post, and appropriated $475,000 "or so much thereof as may be necessary" for this purpose. The Act further provided that the President could take over possession of and title to such lands for the United States, and that "the title to all property so taken over shall immediately vest in the United States." Provision was also made for the President initially to determine just compensation, and the owner was free to accept such compensation, or in the alternative to take 75% of that amount and sue in the Court of Claims for the difference between such 75% and just compensation as determined by that court.

On November 4, 1918, the President issued a proclamation (40 Stat. (Pt. 2) 1874, 1880-1884) taking title for the United States to the lands belonging to the Quantico Company here involved and others. It is clear that title vested in the United States by force of the statute and the proclamation. *United States* v. *McIntosh,* 2 F. Supp. 244, 249, 250-251 (1932). Since both the statute and the proclamation are subject to judicial notice, the correctness of the finding of the courts below that title is in the United States is established independently of the prior litigation between the parties. The Quantico Company thereafter had only a claim for compensation as provided by the statute. If that claim was not satisfactorily met, the remedy was not by

ejectment but by suit against the Government as provided in the Act. Title being in the United States, petitioner is not entitled to possession. *Mcguire* v. *Elount,* 199 U. S. 142, 144, 147 (1905).

Petitioner does not question the fact that the lands in suit were covered by the statute and the proclamation. His case is pitched on the false notion that the 1918 statute constituted a "legislative contract" to pay the Quantico Company $375,000.00 for the property and that this amount has not been paid. (complaint, par. 4, R. 2; Pet. 5, 28.) Even if that were true, it would affect only the amount of just compensation due Quantico Company. Title would nevertheless have vested in the Government and this suit would, therefore, fail. But clearly there was no such contract. Quantico Company offered to sell the lands for that amount (R. 20). But the 1918 Act (*supra,* pp. 3-4) did not constitute an acceptance of that offer. As already shown, the amount to be paid was to be fixed by the President or, at the option of the landowner, by the Court of Claims. And, as appears from the opinion in *United States* v. *McIntosh,* 2 F. Supp. 244, 250, quoted by the court of appeals (R. 35), Quantico Company and two other former owners accepted the amounts fixed by the President. The amount so fixed and accepted by Quantico Company was $269,477.00 paid on September 4, 1919 (admission of fact (d), R. 6).

Petitioner's claim (Pet. 9) that the decision below conflicts with decisions of the Virginia courts and of this Court announcing the principle of estoppel of a tenant to deny his landlord's title is without foundation. The contention is based upon the fact that the Government on July 1, 1918, entered into possession of part of the lands under a lease. But that lease was to run until June 30, 1919, "or until such time as the United States takes possession of said tract of land under authority of and with a view to the purchase thereof" (R. 18). The lease was of course terminated by the Act of the President on November 4, 1918, in taking possession and title for the United States under the authorizing statute. Thus, as the court of appeals stated (R. 38), "the rule of law relied on manifestly has no application to a case where, as here, the lessee has in the meantime acquired title from the lessor."

Petitioner repeatedly refers (Pet. 6-7, 22, 25, 26) to certain admissions of fact made by respondent. Although petitioner's position based upon such admissions is not made clear, it may be assumed that he argues, as he did in the court of appeals, that such admissions recognize title to be in petitioner. These admissions (R. 5-6) clearly cannot be so interpreted. Paragraph 3 of respondent's Second Defense alleged that the land was owned in fee simple by the United States (R. 4). As already shown, that title was acquired on No-

vember 4, 1918. The facts that Quantico Company had owned the lands on July 1, 1918, that part of the lands had been first occupied by the Government under a lease, that rental for a period preceding acquisition of title had been paid by the Government, and that no deed ever passed from Quantico Company to the Government, have no tendency to deny or qualify the title acquired pursuant to the statute.

2. The question of title is *res judicata.* In *United States* v. *H. B. Gilliam and C. E. Ellis, Receivers of the Quantico Company, Incorporated,* Equity No. 33 in the district court below, reported in *United States* v. *McIntosh,* 2 F. Supp. 244 (1932), the United States secured a decree quieting its title to the lands here involved as against petitioner's predecessors and enjoining them from bringing any future action designed to disturb the possession of the Government or its agents. That decree certainly binds petitioner as successor receiver, and it inures to the benefit of those in privity with the United States, i.e., its officers in possession. As the opinions of both courts below make clear (R. 28-29; R. 38), there was unquestioned jurisdiction, and petitioner offers no apparent reason why the decree is not *res judicata* on the question of title.

3. The action is barred by limitations. Section 5805 of the Virginia Code bars an action for

recovery of land brought more than fifteen years after the accrual of the right of action. As pointed out by the district court (R. 29-30) it has been clear to The Quantico Company and its Receivers since November 4, 1918, the date the President took title to and possession of these lands for the United States, that the Government claimed the lands adversely. And certainly no question on this point could exist after May 27, 1931, when the Government instituted the action to quiet its title against petitioner's predecessors, resulting in a decree in the Government's favor. In these circumstances the ruling of the district court that the action was barred by limitations, concurred in by the court of appeals, was clearly correct.

4. Dismissal of the action on the ground of abatement was proper. Although respondent was in possession of the property here involved as agent of the Government when this action was filed, he ceased to be in possession as of May 17, 1949, before the case was decided (R. 22). Consequently, he has not been withholding possession of the property from anyone since that date.

From the foregoing it is clear that, contrary to petitioner's contentions, the granting of summary judgment in this case was eminently proper.

CONCLUSION

The decision below is correct, there is no conflict of decisions, and the case does not warrant further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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MAY 1950.

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